

AMENDED IN SENATE JANUARY 16, 2004

SENATE BILL

No. 1086

Introduced by Senator Sher

January 5, 2004

An act to amend Section 1091 of the Government Code, relating to conflicts of interest, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1086, as amended, Sher. Conflicts of interest.

(1) Existing law prohibits certain public officials and employees from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. An officer is not deemed to be interested in a contract entered into by a body or board of which the officer is a member if the member has only a remote interest in the contract and other requirements are met. A remote interest is defined to include that of an officer or an employee of a nonprofit corporation.

This bill would, ~~instead~~ *in addition*, include within the definition of a remote interest, that of an officer or an employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1091 of the Government Code is~~
2 ~~amended to read:~~

3 ~~1091. (a) An officer shall not be deemed to be interested in~~
4 ~~a contract entered into by a body or board of which the officer is~~
5 ~~a member within the meaning of this article if the officer has only~~
6 ~~a remote interest in the contract and if the fact of that interest is~~
7 ~~disclosed to the body or board of which the officer is a member and~~
8 ~~noted in its official records, and thereafter the body or board~~
9 ~~authorizes, approves, or ratifies the contract in good faith by a vote~~
10 ~~of its membership sufficient for the purpose without counting the~~
11 ~~vote or votes of the officer or member with the remote interest.~~

12 ~~(b) As used in this article, "remote interest" means any of the~~
13 ~~following:~~

14 ~~(1) That of an officer or employee of a nonprofit entity exempt~~
15 ~~from taxation pursuant to Section 501(c)(3) of the Internal~~
16 ~~Revenue Code (26 U.S.C. 501 (c)(3)), except as provided in~~
17 ~~paragraph (8) of subdivision (a) of Section 1091.5.~~

18 ~~(2) That of an employee or agent of the contracting party, if the~~
19 ~~contracting party has 10 or more other employees and if the officer~~
20 ~~was an employee or agent of that contracting party for at least three~~
21 ~~years prior to the officer initially accepting his or her office and the~~
22 ~~officer owns less than 3 percent of the shares of stock of the~~
23 ~~contracting party; and the employee or agent is not an officer or~~
24 ~~director of the contracting party and did not directly participate in~~
25 ~~formulating the bid of the contracting party.~~

26 ~~For purposes of this paragraph, time of employment with the~~
27 ~~contracting party by the officer shall be counted in computing the~~
28 ~~three-year period specified in this paragraph even though the~~
29 ~~contracting party has been converted from one form of business~~
30 ~~organization to a different form of business organization within~~
31 ~~three years of the initial taking of office by the officer. Time of~~
32 ~~employment in that case shall be counted only if, after the transfer~~
33 ~~or change in organization, the real or ultimate ownership of the~~
34 ~~contracting party is the same or substantially similar to that which~~
35 ~~existed before the transfer or change in organization. For purposes~~
36 ~~of this paragraph, stockholders, bondholders, partners, or other~~
37 ~~persons holding an interest in the contracting party are regarded as~~
38 ~~having the "real or ultimate ownership" of the contracting party.~~

1 ~~(3) That of an employee or agent of the contracting party, if all~~
2 ~~of the following conditions are met:~~

3 ~~(A) The agency of which the person is an officer is a local~~
4 ~~public agency located in a county with a population of less than~~
5 ~~4,000,000.~~

6 ~~(B) The contract is competitively bid and is not for personal~~
7 ~~services.~~

8 ~~(C) The employee or agent is not in a primary management~~
9 ~~capacity with the contracting party, is not an officer or director of~~
10 ~~the contracting party, and holds no ownership interest in the~~
11 ~~contracting party.~~

12 ~~(D) The contracting party has 10 or more other employees.~~

13 ~~(E) The employee or agent did not directly participate in~~
14 ~~formulating the bid of the contracting party.~~

15 ~~(F) The contracting party is the lowest responsible bidder.~~

16 ~~(4) That of a parent in the earnings of his or her minor child for~~
17 ~~personal services.~~

18 ~~(5) That of a landlord or tenant of the contracting party.~~

19 ~~(6) That of an attorney of the contracting party or that of an~~
20 ~~owner, officer, employee, or agent of a firm which renders, or has~~
21 ~~rendered, service to the contracting party in the capacity of~~
22 ~~stockbroker, insurance agent, insurance broker, real estate agent,~~
23 ~~or real estate broker, if these individuals have not received and will~~
24 ~~not receive remuneration, consideration, or a commission as a~~
25 ~~result of the contract and if these individuals have an ownership~~
26 ~~interest of 10 percent or more in the law practice or firm, stock~~
27 ~~brokerage firm, insurance firm, or real estate firm.~~

28 ~~(7) That of a member of a nonprofit corporation formed under~~
29 ~~the Food and Agricultural Code or a nonprofit corporation formed~~
30 ~~under the Corporations Code for the sole purpose of engaging in~~
31 ~~the merchandising of agricultural products or the supplying of~~
32 ~~water.~~

33 ~~(8) That of a supplier of goods or services when those goods or~~
34 ~~services have been supplied to the contracting party by the officer~~
35 ~~for at least five years prior to his or her election or appointment to~~
36 ~~office.~~

37 ~~(9) That of a person subject to the provisions of Section 1090~~
38 ~~in any contract or agreement entered into pursuant to the~~
39 ~~provisions of the California Land Conservation Act of 1965.~~

~~(10) Except as provided in subdivision (b) of Section 1091.5, that of a director of or a person having an ownership interest of 10 percent or more in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor or creditor.~~

~~(11) That of an engineer, geologist, or architect employed by a consulting engineering or architectural firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.~~

~~(12) That of an elected officer otherwise subject to Section 1090, in any housing assistance payment contract entered into pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) as amended, provided that the housing assistance payment contract was in existence before Section 1090 became applicable to the officer and will be renewed or extended only as to the existing tenant, or, in a jurisdiction in which the rental vacancy rate is less than 5 percent, as to new tenants in a unit previously under a Section 8 contract. This section applies to any person who became a public official on or after November 1, 1986.~~

~~(13) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity.~~

~~(c) This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.~~

~~(d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.~~

SECTION 1. Section 1091 of the Government Code is amended to read:

1091. (a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board

1 authorizes, approves, or ratifies the contract in good faith by a vote
2 of its membership sufficient for the purpose without counting the
3 vote or votes of the officer or member with the remote interest.

4 (b) As used in this article, “remote interest” means any of the
5 following:

6 (1) That of an officer or employee of a nonprofit *entity exempt*
7 *from taxation pursuant to Section 501(c)(3) of the Internal*
8 *Revenue Code (26 U.S.C. Sec. 501(c)(3)) or a nonprofit*
9 corporation, except as provided in paragraph (8) of subdivision (a)
10 of Section 1091.5.

11 (2) That of an employee or agent of the contracting party, if the
12 contracting party has 10 or more other employees and if the officer
13 was an employee or agent of that contracting party for at least three
14 years prior to the officer initially accepting his or her office and the
15 officer owns less than 3 percent of the shares of stock of the
16 contracting party; and the employee or agent is not an officer or
17 director of the contracting party and did not directly participate in
18 formulating the bid of the contracting party.

19 For purposes of this paragraph, time of employment with the
20 contracting party by the officer shall be counted in computing the
21 three-year period specified in this paragraph even though the
22 contracting party has been converted from one form of business
23 organization to a different form of business organization within
24 three years of the initial taking of office by the officer. Time of
25 employment in that case shall be counted only if, after the transfer
26 or change in organization, the real or ultimate ownership of the
27 contracting party is the same or substantially similar to that which
28 existed before the transfer or change in organization. For purposes
29 of this paragraph, stockholders, bondholders, partners, or other
30 persons holding an interest in the contracting party are regarded as
31 having the “real or ultimate ownership” of the contracting party.

32 (3) That of an employee or agent of the contracting party, if all
33 of the following conditions are met:

34 (A) The agency of which the person is an officer is a local
35 public agency located in a county with a population of less than
36 4,000,000.

37 (B) The contract is competitively bid and is not for personal
38 services.

39 (C) The employee or agent is not in a primary management
40 capacity with the contracting party, is not an officer or director of

1 the contracting party, and holds no ownership interest in the
2 contracting party.

3 (D) The contracting party has 10 or more other employees.

4 (E) The employee or agent did not directly participate in
5 formulating the bid of the contracting party.

6 (F) The contracting party is the lowest responsible bidder.

7 (4) That of a parent in the earnings of his or her minor child for
8 personal services.

9 (5) That of a landlord or tenant of the contracting party.

10 (6) That of an attorney of the contracting party or that of an
11 owner, officer, employee, or agent of a firm that renders, or has
12 rendered, service to the contracting party in the capacity of
13 stockbroker, insurance agent, insurance broker, real estate agent,
14 or real estate broker, if these individuals have not received and will
15 not receive remuneration, consideration, or a commission as a
16 result of the contract and if these individuals have an ownership
17 interest of 10 percent or more in the law practice or firm, stock
18 brokerage firm, insurance firm, or real estate firm.

19 (7) That of a member of a nonprofit corporation formed under
20 the Food and Agricultural Code or a nonprofit corporation formed
21 under the Corporations Code for the sole purpose of engaging in
22 the merchandising of agricultural products or the supplying of
23 water.

24 (8) That of a supplier of goods or services when those goods or
25 services have been supplied to the contracting party by the officer
26 for at least five years prior to his or her election or appointment to
27 office.

28 (9) That of a person subject to the provisions of Section 1090
29 in any contract or agreement entered into pursuant to the
30 provisions of the California Land Conservation Act of 1965.

31 (10) Except as provided in subdivision (b) of Section 1091.5,
32 that of a director of or a person having an ownership interest of 10
33 percent or more in a bank, bank holding company, or savings and
34 loan association with which a party to the contract has a
35 relationship of borrower or depositor, debtor or creditor.

36 (11) That of an engineer, geologist, or architect employed by a
37 consulting engineering or architectural firm. This paragraph
38 applies only to an employee of a consulting firm who does not
39 serve in a primary management capacity, and does not apply to an
40 officer or director of a consulting firm.

1 (12) That of an elected officer otherwise subject to Section
2 1090, in any housing assistance payment contract entered into
3 pursuant to Section 8 of the United States Housing Act of 1937 (42
4 U.S.C. Sec. 1437f) as amended, provided that the housing
5 assistance payment contract was in existence before Section 1090
6 became applicable to the officer and will be renewed or extended
7 only as to the existing tenant, or, in a jurisdiction in which the
8 rental vacancy rate is less than 5 percent, as to new tenants in a unit
9 previously under a Section 8 contract. This section applies to any
10 person who became a public official on or after November 1, 1986.

11 (13) That of a person receiving salary, per diem, or
12 reimbursement for expenses from a government entity.

13 (14) That of a person owning less than 3 percent of the shares
14 of a contracting party that is a for-profit corporation, provided that
15 the ownership of the shares derived from the person's employment
16 with that corporation.

17 (c) This section is not applicable to any officer interested in a
18 contract who influences or attempts to influence another member
19 of the body or board of which he or she is a member to enter into
20 the contract.

21 (d) The willful failure of an officer to disclose the fact of his or
22 her interest in a contract pursuant to this section is punishable as
23 provided in Section 1097. That violation does not void the contract
24 unless the contracting party had knowledge of the fact of the
25 remote interest of the officer at the time the contract was executed.

26 SEC. 2. This act is an urgency statute necessary for the
27 immediate preservation of the public peace, health, or safety
28 within the meaning of Article IV of the Constitution and shall go
29 into immediate effect. The facts constituting the necessity are:

30 In order to ensure that nonprofit entities exempt from taxation
31 pursuant to Section 501(c)(3) of the Internal Revenue Code are
32 included within the definition of remote interest, it is necessary
33 that this act take effect immediately.